



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,666	11/10/2003	Dennis E. Parham	D2958RE	5356
26829	7590	02/07/2005	EXAMINER	
JOHN L. JAMES P.O. BOX 2025 MARIETTA, GA 30061-2025			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER

3634

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,666

Applicant(s)

PARHAM, DENNIS E.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003 and 03 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All; b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's election, filed January 3, 2005, in reply to the restriction requirement, mailed December 3, 2004, is acknowledged.

However, upon further review of 37 CFR 1.176(b), MPEP 1450, and MPEP 806-806.05(i), the previous Office action, namely the restriction requirement mailed December 3, 2004, is hereby withdrawn for the following reasons.

In particular, as stated in 37 CFR 1.176(b), the examiner is not permitted to require restriction among original claims of the patent (i.e., among claims that were in the patent prior to filing the reissue application). *However*, restriction between multiple inventions recited in the newly added claims will be permitted provided the added claims are drawn to several separate and distinct inventions. In such a situation, the original patent claims would be examined in the first reissue application, and applicant is permitted to file a divisional reissue application for each of the several separate and distinct inventions identified in the examiner's restriction requirement.

Accordingly, claims 1-24 have been further reviewed and a new restriction requirement follows.

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17, drawn to a merchandising track device, classified in class 211, subclass 59.2.
- II. Claims 18-20 and 21, drawn to a front panel assembly, classified in class 211, subclass 74.
- III. Claims 22-24, drawn to a front panel assembly, classified in class 211, subclass 184.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as use without tabs, as in invention I. See MPEP § 806.05(d).

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as use without tabs, as in invention I. See MPEP § 806.05(d).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as use without a third upstanding vertical member, as in invention III. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Accordingly, since this restriction requirement is part of a re-issue application, the original patent claims 1-17 have been constructively elected. (See MPEP 1450)

Hence, newly added claims 18-24 have been constructively non-elected and thus have been withdrawn from consideration.

Thus, it is suggested that applicant file a divisional reissue application directed to one of the constructively non-elected inventions (of Groups II or III). Then, *after* the divisional reissue application has been filed, the claims to the patented invention (the claims of Group I), which have been constructively elected in this reissue application, will be examined, and if found allowable without change from the patent, a rejection of the original patent claims will be made under 35 U.S.C 251 based on the fact that there is no "error" in the non-amended original patent claims, since the Office will not grant a reissue patent which does not correct any error in the original patent.

Conclusion

Since this reissue application contains only original unamended claims and since the Office will not grant a reissue patent which does not correct any error in the original patent, further examination of this reissue application has been suspended.

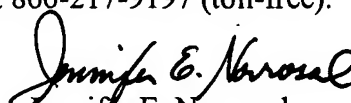
A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action, for which time applicant may file a divisional reissue application drawn to one of the constructively non-elected inventions (of Groups II or III).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
February 4, 2005